

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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OCT 14 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Reallocation of Television Channels  
60-69, the 746-806 MHz Band

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ET Docket No. 97-157

To: The Commission

**REPLY COMMENTS  
OF THE  
AMERICAN PETROLEUM INSTITUTE**

**THE AMERICAN PETROLEUM INSTITUTE**

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Dated: October 14, 1997

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## SUMMARY

The American Petroleum Institute ("API") applauds the Federal Communications Commission's efforts to address the communications requirements of entities that protect the health and safety of the general public. With that objective in mind, API reminds the Commission of the vital public safety role played every day by the petroleum and natural gas industries. These industries are required by federal, state and local laws to ensure the safe production, refining and distribution of their petroleum products.

Although not traditional public safety entities, members of the oil and natural gas industries often work together with governmental agencies in responding to emergency situations such as oil spills. These efforts have been impeded in some instances by a lack of interoperability between private and public systems. To eliminate this obstacle to the effective coordination of public safety services, API urges the Commission to designate a minimum of twenty channel pairs from the new public safety spectrum as "mutual aid" channels for emergency use by both governmental entities and private parties responsible for preserving public safety. Such an allocation would be entirely consistent with the provisions of the Balanced Budget Act of 1997, which requires the reallocation of 24 MHz of spectrum to "public safety services" and defines this term to include services that are aimed at protecting the safety of life, health, or property and that are provided by non-governmental organizations with the authorization of governmental agencies.

API also requests that the Commission identify additional spectrum for allocation to the private land mobile services, as anticipated by Congress in the Conference Report accompanying the Balanced Budget Act of 1997. Such spectrum is needed to satisfy the vital public safety and other day-to-day operational requirements of the entities that maintain our nation's critical infrastructure, including oil and natural gas pipelines, utilities, railroads and metropolitan transit systems.

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The American Petroleum Institute ("API"), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits the following Reply Comments regarding Comments filed by other participants in response to the Commission's Notice of Proposed Rule Making ("Notice") released in the above-captioned matter on July 10, 1997. API supports the Commission's proposal to allocate 24 MHz of spectrum at 764-776 MHz and 794-806 MHz to public safety use and urges the Commission to take additional measures to ensure that adequate spectrum is available for mutual aid organizations and other non-governmental entities which perform public safety functions.

## **I. PRELIMINARY STATEMENT**

1. API is a national trade association representing approximately 350 companies involved in all phases of the petroleum and natural gas industries, including exploration, production, refining, marketing, and transportation of petroleum, petroleum products and natural gas. Among its many activities, API acts on behalf of its members as spokesperson before federal and state regulatory agencies. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the petroleum and natural gas industries.

2. Reliable two-way land mobile radio is an essential tool in almost every phase of the petroleum and natural gas industries. Reliable communications must be maintained during exploration activities for the direction of personnel and equipment, control and synchronization of multiple geophysical acoustical signal sources for oil and gas exploration, as well as for telemetering geophysical data. Drilling operations, by their very nature, involve hazards that can be minimized with reliable two-way mobile radio communications. After oil and gas production is established, mobile radio continues to play a critical role in providing communications for the management of individual wells, as well as entire fields and pipeline gathering systems, where careful supervision must be

maintained according to federal laws over the operation of valves, pumps, compressors, separation equipment, and local gathering systems. The safe and efficient operation of the extensive pipeline gathering systems and long-distance, crude, petroleum products and natural gas pipelines would not be possible without reliable two-way mobile radio communications.

3. These same types of reliable communications are absolutely necessary in petroleum refineries where the safety of personnel and adjacent populations, including the surrounding environment, demand clear channels of communication. Even in the marketing and distribution of these energy sources, mobile radio continues to play an important role in the transfer of natural gas at city gates, and the loading and delivery by rail, tank trucks and marine vessels of refined petroleum products to industrial, commercial and residential customers.

4. The petroleum and natural gas industries were pioneers in the use of two-way mobile radio for these industrial safety applications. While the use of private, internal systems may be supplemented with Commercial Mobile Radio Services ("CMRS"), where those services are available and can meet some needs, there remains a very critical requirement for privately-owned and operated two-way mobile radio systems in these industries. Because public switched systems frequently become incapacitated during emergency conditions because of peak subscriber demand, private systems are

essential in these circumstances to ensure the ongoing safe execution of energy operations where hazardous conditions could develop without reliable communications. Moreover, private systems will continue to be needed for both operational and safety communications in areas where there are inadequate or no public telecommunications facilities.

5. API members operate conventional and trunked mobile radio systems in all of the Private Land Mobile Radio Services ("PLMRS") bands. For example, API members utilize Industrial/Land Transportation ("I/LT") and/or Business Category channels in the 800 MHz and 900 MHz bands. Existing licensees seek authority, from time to time, to modify and expand these systems, and it is fully expected that new applicants in the energy industries will seek additional spectrum in the future. API members also utilize spectrum in the Private Operational-Fixed Microwave Service ("POFS") to serve a variety of vital point-to-point and point-to-multipoint telecommunications requirements, including communications between remote oil and gas exploration and production sites, for supervisory control and data acquisition ("SCADA") systems, to communicate with refineries, and to extend circuits to remote pipeline pump and compressor stations.

6. Another important use of spectrum by API members is a limited allocation for oil spill containment and cleanup operations. This allocation includes two low band,



four VHF, and a single pair of UHF channels. 47 C.F.R. § 2.106, n. NG 112. The Petroleum Radio Service oil spill response channels are licensed on a secondary basis to Petroleum Radio Service eligibles for day-to-day land mobile communications. In the event of an oil spill, the secondary users must immediately cease use of these channels if they are needed for containment and cleanup communications. Although this allocation has provided the core of emergency communications response packages for many years and has been sufficient in some instances, it is woefully inadequate for a major incident. To make matters worse, the Commission recently proposed to allocate one-half of the UHF oil spill containment channel pair to the Non-Voice, Non-Geostationary Mobile Satellite Services ("Little LEOs").<sup>1/</sup>

7. As a result of its need for adequate spectrum to serve the important public safety functions described above, API has been an active participant in WT Docket No. 96-86, the Commission's proceeding to address public safety spectrum requirements through the year 2010. In that proceeding, API argued that private entities which promote public safety -- including the petroleum and natural gas industries, mutual aid organizations, pipelines, other utilities and railroads -- should be afforded access to spectrum reallocated for public safety purposes. Accordingly, API now implores the

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<sup>1/</sup> See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service, IB Docket No. 96-220, *Notice of Proposed Rule Making* (Oct. 29, 1996).

Commission to implement this proposal to the greatest extent possible in connection with the reallocation of television channels 60-69.

## II. REPLY COMMENTS

8. API enthusiastically supports the numerous Comments which emphasize the need for additional spectrum for public safety use and urge the Commission to move forward as quickly as possible to implement the proposed reallocation.<sup>2/</sup> As many commenting parties point out, the reallocation from broadcast channels 60-69 of at least 24 MHz of spectrum for public safety services is explicitly required by the Balanced Budget Act of 1997 ("Budget Act"), enacted by Congress on August 5, 1997.<sup>3/</sup> Also consistent with the Budget Act, API recommends that the Commission permit use of at least some of the new public safety channels by mutual aid organizations that work in partnership with governmental entities to promote public safety. Further, API requests

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<sup>2/</sup> See, e.g., Comments of: the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs, Inc. ("IAFC"); the Association of Public-Safety Communications Officials-International, Inc. ("APCO"); the Affiliated American Railroads; the California Public-Safety Radio Association; the County of Los Angeles; Ericsson, Inc.; the Land Mobile Communications Council ("LMCC"); Motorola; the National Public Safety Telecommunications Council ("NPSTC"); the Personal Communications Industry Association ("PCIA"); the Rural Telecommunications Group; the State of California; the State of Florida; and UTC, The Telecommunications Association ("UTC").

<sup>3/</sup> See, e.g., Comments of: IMSA/IAFC; APCO; the Affiliated American Railroads; LMCC; and PCIA.

that the Commission expeditiously follow through on Congress's direction to consider the allocation of additional spectrum for internal use by private licensees.

**A. A Portion of the New Public Safety Spectrum Should Be Available for Mutual Aid Use by Private Entities Authorized by Governmental Agencies to Provide Public Safety Services**

9. In the Notice that initiated this proceeding, as well as in WT Docket No. 96-86, the Commission recognized that a major obstacle in meeting public safety communications requirements is that agencies operate their own communications systems on separate channels, using technologies that are incompatible with the equipment used by other agencies. (See Notice at ¶ 8). Toward this end, the NPSTC stated in its Comments that the proposed use for public safety purposes of the reallocated spectrum "envision[s] nationwide dedicated channels for interoperability and mutual aid."<sup>4/</sup> Oil and gas companies have been hampered by a lack of interoperability in responding to emergency situations such as oil spills, where both public and private services are required. Accordingly, in order to facilitate the interoperability of public safety radio systems, the Commission should designate a minimum of twenty channel pairs from the

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<sup>4/</sup> Comments of NPSTC at 10-11. The NPSTC defined "mutual aid" as "uniformly designated channels upon which traffic loads, beyond the capacity of normal operating systems, can be used in times of major incident or catastrophe, or for routine interagency communications, where commonality of channels and technical standards between different agencies' systems does not exist." Id. at 11 n.8.

new public safety spectrum as “mutual aid” channels for emergency use by both governmental entities and private parties responsible for preserving public safety.

10. Dozens of mutual aid organizations exist throughout the United States. Local industries that may have their own emergency response vehicles (including fire fighting equipment and ambulances), staff and equipment belong to these organizations, which are often administered by a governmental agency such as the fire department. For the most part, interoperability is achieved by the local agency giving the industrial entities radios that may be utilized only in an emergency and that are operated on a local government's public safety channels. The frequencies presently available for shared use emergency response operations are not sufficient to offer highly reliable communications in the case of a disaster such as an oil spill. Likewise, clean-up drills and other emergency response drills conducted by public service entities cannot be accommodated with the limited frequencies currently available for such purposes.

11. The Baton Rouge Mutual Aid organization, for example, is administered by the Baton Rouge Fire Department. The mutual aid participants include large refineries and chemical plants located in the Baton Rouge corridor of the Mississippi River. Many of these industrial plants maintain their own local emergency response equipment. The City of Baton Rouge holds the license for an 800 MHz trunked system and has provided

industrial companies located along the river with radios to access the system.<sup>5/</sup> Of the 68 participants in this mutual aid program, approximately 30 maintain fire department radios on their premises. The fire department checks the radios every morning and, in cases of severe weather, may send a warning to mutual aid participants. Governmental agencies utilize the mutual aid channel to request emergency response equipment from industrial members. Thus, interoperability between public service and public safety entities is vital for the success of mutual aid organizations. More spectrum is needed, however, to permit mutual aid organizations to accomplish their mission.

12. The allocation for use by mutual aid organizations of certain of the new public safety spectrum created from television channels 60-69 would be entirely consistent with Congress's instructions to the Commission in the Budget Act. As Compu-DAWN, Inc. ("Compu-DAWN") noted in its Comments in this proceeding, Congress defined "public safety services" for purposes of the new public safety allocation as "services -- (A) the sole or principal purpose of which is to protect the safety of life, health, or property; (B) that are provided -- (i) by State or local government entities; or

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<sup>5/</sup> Although the licensee in this instance is a local government, the Commission's rules also allow non-governmental entities to hold Public Safety radio licenses in certain circumstances. Under the new Part 90 rules adopted in the Commission's "refarming" proceeding, persons or organizations other than governmental entities that are, for example, charged with specific fire protection activities or engaged in the delivery of medical services to the public are eligible to hold authorizations in the Public Safety Pool. 47 C.F.R. § 90.20(a)(2) (effective Oct. 17, 1997).

(ii) by non-governmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and (C) that are not made commercially available to the public by the provider.” 47 U.S.C. § 337(f) (emphasis added).<sup>6/</sup> Given that mutual aid organizations typically are administered by governmental agencies and that mutual aid channels are used only in emergency situations, the designation of new public safety channels for mutual aid use would fit squarely within the eligibility requirements established by Congress for this spectrum.

13. In short, API agrees with Compu-DAWN and UTC that the new public safety spectrum should be made available to private entities that work in concert with governmental agencies to protect essential resources and promote the public welfare.<sup>7/</sup> UTC correctly points out, in this regard, that the *Final Report* of the Public Safety Wireless Advisory Committee (“PSWAC”) expressly acknowledged the need for interoperability between traditional public safety agencies and non-governmental entities “that furnish, maintain, and protect the nation’s basic infrastructures” and, as a result, recommended the establishment of a new interoperability band for which all such entities

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<sup>6/</sup> See Comments of Compu-DAWN at 3-4.

<sup>7/</sup> Comments of Compu-DAWN at 3-4; Comments of UTC at 2-5.

would be eligible.<sup>8/</sup> The instant proceeding presents the Commission with an ideal opportunity to carry out this fundamental aspect of the PSWAC *Final Report*.

**B. More Spectrum Is Needed for Internal Use by “Critical Infrastructure” and Other Private Licensees**

14. The mutual aid allocation recommended above would enhance the ability of the oil and natural gas industries to respond quickly and effectively to emergency situations. These industries also require access to land mobile radio channels to monitor and control their day-to-day operations, thereby reducing the likelihood that an emergency will occur in the first place. As such ongoing (non-emergency) spectrum use typically is not under the direction of a governmental entity and, therefore, does not appear to fit within Congress’s definition of “public safety services,” the 24 MHz of new “public safety services” spectrum presumably could not be used for these purposes.

15. Recognizing the important public safety role that private radio services often play, however, Congress included a provision in the Budget Act which exempts from the Commission’s competitive bidding authority “public safety radio services, including private internal radio services” which are “used by State and local governments and non-government entities . . . to protect the safety of life, health, or property” and “are

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<sup>8/</sup> Comments of UTC at 3-4.

not made commercially available to the public.” 47 U.S.C. § 309(j)(2)(A) (emphasis added). The Conference Report accompanying the new legislation states that this exemption includes “‘private internal radio services’ used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments.” Conference Report at Section 3002(a). Although Congress concluded that it was unable to require the allocation of additional spectrum for such “private internal radio services” as part of the budget reconciliation process, the Conference Report directs the Commission and the National Telecommunications and Information Administration (“NTIA”) “to consider the need to allocate additional spectrum for shared or exclusive use by private wireless services in a timely manner.” Conference Report at Section 3002(e).

16. API concurs with the Comments filed in this proceeding which advocate the allocation of additional spectrum for private land mobile services to relieve the critical spectrum shortage that presently exists.<sup>2/</sup> Such services “provide the public with a variety of business and industrial applications that play a significant role in maintaining the infrastructures critical to public safety, such as utilities and transportation facilities.”<sup>10/</sup> While these “infrastructure” entities could bid for spectrum at the Commission’s auction of the remaining 36 MHz from channels 60-69, API agrees with the Affiliated American

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<sup>2/</sup> See Comments of the Affiliated American Railroads at 4; Comments of PCIA at 8.

<sup>10/</sup> Comments of PCIA at 8.



Railroads that auctions are “a particularly inappropriate allocation and licensing mechanism” for private internal users with public safety responsibilities.<sup>11/</sup> Moreover, such entities should not be expected to engage in competitive bidding to meet their spectrum needs in light of the fact that they have been expressly exempted from the Commission’s competitive bidding authority. Thus, the Commission, together with the NTIA, should promptly initiate the process of identifying and allocating appropriate spectrum for internal use by private land mobile licensees.

### III. CONCLUSION

17. The need for interoperability between traditional public safety agencies and private entities that perform important public safety functions has been well documented. To alleviate this need in a manner consistent with the Budget Act, API urges the Commission to designate a minimum of twenty pairs of the new public safety channels for use by mutual aid organizations in emergency situations such as oil spills. Further, the Commission should seek to identify additional spectrum to satisfy the critical public safety and other day-to-day operational requirements of private land mobile radio licensees.

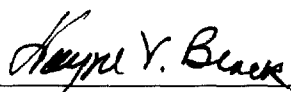
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<sup>11/</sup> Comments of the Affiliated American Railroads at 4.

**WHEREFORE, THE PREMISES CONSIDERED**, the American Petroleum Institute respectfully urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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